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June 30, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Magalie Roman Salas
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Federal Communications Commission
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Washington, D.C. 20554

**Re: Petition on Defining Certain Incumbent LEC Affiliates as
Successors, Assigns, or Comparable Carriers Under Section
251(h) of the Communications Act;
CC Docket No. 98-39**

Dear Ms. Salas:

I am writing on behalf of the Competitive Telecommunications Association ("CompTel"), the Florida Competitive Carriers Association ("FCCA"), and the Southeastern Competitive Carriers Association ("SECCA"), for two reasons: to summarize a telephone conversation I had this morning with James Casserly, Legal Advisor to Commissioner Ness, in which I responded to a question he posed during an *ex parte* meeting regarding this proceeding on June 16; and to provide an update regarding information submitted with earlier *ex parte* filings.

1. Mr. Casserly asked whether an ILEC's so-called "CLEC" affiliate could obtain access to the ILEC's customer proprietary network information ("CPNI") to market local service to a customer without the customer's prior approval under Section 222 of the Act and the Commission's CPNI policies. The answer appears to be yes. The Commission held: "[T]here should be no restriction on the sharing of CPNI among a carrier's various telecommunications entities. . . . [T]he CPNI limitations should relate to the nature of the service provided and not the nature of the entity providing the service. In particular, under the total service approach, we interpret the scope of section 222(c)(1)(A) to permit carriers to use or disclose CPNI based on the customer's implied approval to market related offerings within the customer's existing service relationship." *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Report and Order, FCC 98-27, ¶ 51 (released Feb. 26, 1998) ("CPNI Order"), *recon. pending*; 47 C.F.R. § 64.2005(a)(1). The same rule applies to Bell operating companies as to all other carriers. *CPNI Order* at ¶¶ 158-69; see also *id.*, Statement of Commissioner Susan Ness Dissenting In Part.

Thus, an in-region ILEC-affiliated "CLEC" can engage in marketing local service to ILEC customers using ILEC CPNI obtained *without prior customer approval* --

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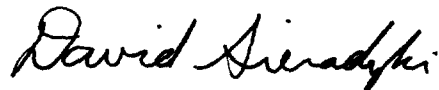
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unlike any independent CLEC, to whom "an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request" from the customer. 1/ *CPNI Order* at ¶ 84. This is an additional reason to establish a rebuttable presumption that such entities are ILEC *alter egos*, and to insist that they comply with the Section 251(c) local competition rules that apply to ILECs.

2. I am enclosing an updated chart summarizing state commissions' consideration of ILEC in-region "CLEC" affiliate issues. Specifically, I want to highlight the decision of the Public Service Commission of Wisconsin, which prohibited Ameritech from operating a CLEC affiliate, "ACI," in Ameritech service territory in Wisconsin until Ameritech obtains Section 271 approval for Wisconsin (although it permitted the entity to operate in GTE service territory). The Wisconsin Commission also imposed significant restrictions on ACI that will apply even *after* Section 271 approval is obtained. For example, the Wisconsin Commission prohibited ACI from operating under the same brand name as Wisconsin Bell or using other service and trade marks, prohibited ACI from seeking or accepting any CPNI from its ILEC affiliate unless the information is generally available on equal terms to others or the customer has specifically authorized transfer of the information, and prohibited other forms of preferential treatment by the ILEC. I am enclosing a copy of the Wisconsin Commission order.

Please call me if you have any questions.

Respectfully submitted,



David L. Sieradzki
Counsel for CompTel, FCCA, and SECCA

Enclosures

cc: John Nakahata
Thomas Power
James Casserly
Kevin Martin
Kyle Dixon
Paul Gallant
Parties on attached service list

1/ The Commission noted, however, that *if customer approval is obtained*, Section 222 does not prohibit ILECs from disclosing CPNI to competing carriers that are about to commence service to the customer, and that, depending on the circumstances, such disclosure may be required to avoid unreasonable discrimination under Section 201(b). *CPNI Order*, ¶¶ 84-85.

STATE CONSIDERATION OF ILEC IN-REGION "CLEC" AFFILIATES

STATE	ILEC	DECISION	DATE
AL	BellSouth	Permitted.	2/2/98
CA	Pacific Bell	Withdrawn after negative ALJ preliminary decision	5/6/97
CA	GTE	Permitted for wireless affiliate.	2/23/96
CT	SNET	Permitted in context of restructured relationship between ILEC and retail affiliate.	6/25/97
FL	BellSouth	Proceeding in progress - no decision issued.	N/A
FL	GTE	Permitted, but did not analyze relationship with ILEC.	2/24/97
GA	BellSouth	Permitted with conditions (e.g., ad disclosures; separate books, records, accounts; separate officers, directors, employees; no creditor access to ILEC assets; independent audits; arms-length transactions)	3/5/98
KY	BellSouth	Rejected in BellSouth service areas.	6/8/98
MI	Ameritech	Rejected until FCC grants ILEC 271 relief.	8/28/96
MI	GTE		
NC	GTE	Permitted, but did not analyze relationship with ILEC.	4/16/97
SC	GTE	Permitted, but did not analyze relationship with ILEC.	9/12/97
SC	BellSouth	Permitted, but did not analyze relationship with ILEC.	12/23/97
TX	GTE	Rejected in GTE service areas.	10/30/97
WI	Ameritech	Rejected until FCC grants ILEC 271 relief; thereafter allowed for the provision of local service through resale only, and subject to conditions (e.g., no use of ILEC name, no preferential treatment by ILEC, no access to ILEC CPNI or network information, no ILEC subsidization, affiliate transaction requirements).	11/26/96

STATE DECISIONS ON SPRINT "CLECS"

FL	Sprint	Permitted, but did not analyze relationship with ILEC.	12/27/95
KS	Sprint	Permitted, but did not analyze relationship with ILEC.	8/7/96
MO	Sprint	Not applicable -- certification not sought within Sprint ILEC service area.	2/28/97
NB	Sprint	Not applicable -- certification not sought within Sprint ILEC service area.	2/28/97
NV	Sprint	Permitted with conditions (e.g., ad disclosures; separate books, records, accounts; separate officers, directors, employees; no creditor access to ILEC assets; independent audits; arms-length transactions)	11/7/97
NJ	Sprint	Permitted, but did not analyze relationship with ILEC.	7/17/96
NC	Sprint	Permitted, but did not analyze relationship with ILEC.	3/7/97
PA	Sprint	Permitted, but did not analyze relationship with ILEC.	12/5/96
SC	Sprint	Permitted, but did not analyze relationship with ILEC.	12/3/96
TN	Sprint	Permitted, but did not analyze relationship with ILEC.	10/3/96
VA	Sprint	Permitted, but did not analyze relationship with ILEC.	11/8/96
WA	Sprint	Permitted, but did not analyze relationship with ILEC.	7/9/97

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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Ameritech Communications of Wisconsin,
Inc., for Certification as a Telecommunications Carrier

139-NC-100

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
INTERIM ORDER, AND CERTIFICATE**

Proceedings

On March 28, 1996, Ameritech Communications of Wisconsin, Inc. (ACI), 9525 West Bryn Mawr, Rosemont, Illinois 60018, filed an application, pursuant to s. 196.499(15), Stats., for certification as a telecommunications carrier to offer local and intraLATA long distance telecommunications services in Wisconsin.

On May 7, 1996, the Commission issued a Notice of Investigation, Assessment of Costs, and Request for Comments in the docket. Comments were filed by ACI, AT&T Communications of Wisconsin, Inc., Frontier Communications of the Great Lakes, Inc., MCI Telecommunications Corp., Time Warner Communications, as well as Sprint Communications Company, L.P., TCG Milwaukee, Inc., Wisconsin Bell, Inc. (Ameritech Wisconsin), the Wisconsin Department of Justice Telecommunications Advocate, NorLight, Inc., PTI Communications, and staff. Two parties requested a hearing on the potential for anticompetitive conduct in the affiliate relationship between ACI and Ameritech Wisconsin (AW), both of which are ultimately owned by Ameritech Corporation.

After the submission of comments and discussion of the application with staff, ACI modified its application in a letter dated November 6, 1996. The modifications include seeking certification under s. 196.01(1d)(f), Stats., as an alternative telecommunications utility--other (ATU-Other). The modified application also proposes conditions prohibiting ownership of any facilities capable of providing local exchange service¹ in the obliged-to-serve territories of AW, but authorizing local exchange services in those territories via resale. ACI would also be able to purchase tariffed unbundled network elements but only when those elements are acquired as a group for the account of an end-user customer. The purpose of the purchase must be to reconstitute the equivalent of the incumbent local exchange carrier's current tariffed wholesale service offerings that mirror retail offerings and that ACI could have purchased to provide the local exchange service sought by that customer. ACI further agreed to accept the effective date of certification as coincident with Federal Communications Commission (FCC) authorization for AW or an affiliate to begin offering in Wisconsin "in-region, interLATA service," as defined in § 271 of the Telecommunications Act of 1996 (1996 Act).² Lastly, ACI agreed that any interconnection or resale agreement between ACI and AW will be an affiliated interest transaction subject to s. 196.52, Stats.

¹ Throughout this decision, including the certificate, the term "local exchange service" shall have the meaning given in s. 196.50(1)(b)1., Stats., and shall include other retail services offered by AW to its end-user customers in its local exchange territory.

² Pub. L. 104-104, 110 Stat. 56 (enacted February 8, 1996)(to be codified at 47 U.S.C. § 151 et. seq.)("1996 Act").

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On August 19, 1996, TCG Milwaukee, Inc. (TCG), filed a motion to delay action pending adoption of federal rules. At its open meeting of September 10, 1996, the Commission denied this motion, and subsequently issued a letter order confirming the denial.

On November 12, 1996, staff circulated a proposed order to parties which included interim conditions that address some of the concerns raised in the comments. These conditions are intended to promote competitive markets, while at the same time protecting the public interest in universal service and infrastructure, as well as the interests of end-users and potential new entrants desiring to interconnect and compete with AW. Comments were received from eight of the interested parties. The Commission has fully considered the further comments, both in support and opposition to the proposed order. No hearing was held.

Certification as an ATU-Other is granted for a limited period, subject to interim conditions.

For purposes of any petition for judicial review under ss. 227.52 and 227.53, Stats., a list of persons interested in this proceeding is set forth in Appendix A.

FINDINGS OF FACT

THE COMMISSION FINDS:

Applicant and Proposed Services

ACI was incorporated as a Delaware corporation on March 25, 1996, and is duly qualified to do business in Wisconsin. ACI is a wholly owned subsidiary of Ameritech Communications, Inc., which is a wholly owned subsidiary of Ameritech Corporation.

In its application, ACI proposes to commence operations as an intraLATA toll provider and local services reseller. Ultimately, ACI intends to secure authority to provide

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interLATA toll service within the state, as soon as permitted by the 1996 Act and any required FCC approval. ACI will not offer basic local exchange service except on a resale basis nor will it own any local exchange service facilities to provide local service. ACI will also provide Lifeline service, "911" emergency service, deaf and hard of hearing and speech impaired services, directory assistance, printed directories, 900 blocking, basic local exchange options, and services for the disabled. ACI is not requesting permission to provide access service to the public nor business access line and usage service within any local calling area served by a telecommunications utility with 150,000 or fewer access lines.

ACI will own and operate some of its own interexchange switching and transmission facilities for the provision of interLATA and intraLATA toll service. The interexchange transportation facilities ACI intends to use, however, may be obtained through resale, through lease of facilities of its parent corporation Ameritech Communications, Inc., or other providers of telecommunications service, or through direct ownership of transport facilities. ACI's network plans include deployment of a four-fiber, bi-directional OC-48 SONET ring architecture with fully-redundant transmission capacity. This fiber ring, to be completed in late 1996 or early 1997, will be comprised of links connecting the following city pairs: Chicago-Milwaukee; Milwaukee-Madison; Madison-Rockford; and Rockford-Chicago. A NorTel DMS digital switch will be located in Chicago. At a minimum, there would be a 2X OC48 add-drop multiplexer in each of the four cities. High-capacity extension from this network may be constructed or purchased from other carriers and resold where necessary to meet customer demand.

Certification in General

ACI has demonstrated sufficient financial resources, managerial skills, and technical expertise to enable it to offer telecommunications services in Wisconsin. Additional competition by ACI is consistent with the public interest, and, therefore, the Commission may authorize ACI to provide telecommunications services directly through its own facilities or on a resale basis (not including foreign exchange services, cross-LATA boundary services, or nonaffiliate local calling areas). There are three basic limitations on the scope of authority. The first limitation, respecting facilities, is that ACI, in AW territory, may not own or operate switching or transmission facilities, including private lines, capable of providing local exchange service.³ The second limitation is that, in AW territory, ACI shall only resell local exchange services, such as R-1, B-1, and other tariffed local exchange services. ACI may purchase tariffed unbundled network elements, but only when those elements are acquired as a group for the account of an end-user customer in order to reconstitute the equivalent of the incumbent local exchange carrier's current tariffed wholesale service offering that mirror retail offerings and that ACI could have purchased to provide the local exchange service sought by that customer. The last limitation, part of ACI's original application, is that no facilities-based local exchange service, as defined in s. 196.50(1)(b)1., Stats., may be rendered in a municipality, served by a telecommunications utility having 150,000 or fewer access lines in this state and for which additional certification is required pursuant to s. 196.50(1)(b), Stats. The first two limitations are justified by the

³ For purposes of this restriction, throughout this order "capable of providing local exchange service" means switching and transmission facilities which are configured in such a way so as to provide local exchange service.

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discussion, set forth below, of the reconciliation of federal and state regulatory schemes and the related findings and conditions.

Certification as ATU-Other

The 1993 Wisconsin Act 496 (Act 496) created a new classification of alternative telecommunications utility (ATU-Other) under s. 196.01(1d)(f), Stats. A provider may be classified as an "other" ATU under this section if it provides services which are available from other service providers. The services which ACI proposes to provide are available from other telecommunications providers, such as toll services from telecommunications carriers and short-haul toll and local exchange service from public utilities, such as GTE North Incorporated (GTE) and AW. ACI, however, does not propose to serve any geographical area as a public utility certified under s. 196.50, Stats., and will provide local services in the same exchanges as its sister affiliate, AW. AW is a telecommunications utility that has elected price regulation under s. 196.196, Stats., complete with an investment commitment plan. AW also serves about two-thirds of the access lines in this state. Most of these lines are located in the principal urban areas, but some are also in rural communities.

Because of ACI's agreed change from carrier certification, ACI's relationship with AW, the current uncertainties and changes arising from the 1996 Act, and the public interest concerns warranting the conditions described hereafter, the Commission finds that certifying ACI as an ATU-Other is consistent with the public interest as framed by s. 196.03(6), Stats., but only insofar as constrained by the 1996 Act's requirement of a separate subsidiary for in-region, interLATA toll. While the Commission is not making a conclusive finding that the seven public interest factors found in s. 196.03(6), Stats., are applicable as a matter of law to

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the instant case, the Commission nevertheless notes that the public interest in the promotion of universal service is a major reason for the conditions and certification limitations in this decision.

The Commission finds that, under the requirement in s. 196.03(6), Stats., to promote universal service, certification of ACI for currently available toll and local services, with conditions and limitations, is necessary to protect the public interest in universal service as outlined in s. 196.218, Stats., and ch. PSC 160, Wis. Adm. Code. ACI's immediate competition with AW represents a significant potential for the rapid erosion of the economies of scope and scale of AW through the diversion of customers seeking the bundled services that because of federal law, can only be practically bundled from the position of the separate subsidiary required for in-region, interLATA toll service. If there were no separate subsidiary requirement, the Commission would stand on its finding in the AADS case,⁴ the only difference being the greater immediacy of ACI's competitive threat because it involves current services rather than a future element of network design:

"The record demonstrates that the convergence of technologies will very likely require the public switched telecommunications network to acquire broadband switching connectivity. [AW] is the major LEC in Wisconsin. The Commission finds that the legislature's universal service public interest goals would be significantly at risk with the authorization of AADS as the active rival to a passive, non-competing [AW]. The potential for harm to [AW] jeopardizes the public policy objectives respecting universal service funding and universal service as to significantly outweigh any purported maximization of competition, per s. 133.01, Stats." AADS, supra, (slip decision, at p. 32).

⁴ Petition of Ameritech Advanced Data Services of Wisconsin, Inc., for Authorization to Resell Frame Relay, Switched Multimegabit Data, and Asynchronous Transfer Mode Services on an Intrastate Basis and to Operate as an Alternative Telecommunications Utility in Wisconsin, et. al., docket 7825-TI-100 (September 1, 1995) ("AADS") pending on judicial review, sub. nom. Ameritech Advanced Data Services of Wisconsin, Inc. v. Public Service Commission of Wisconsin, Dane County Circuit Court, Case No. 95-CV-2524.

In light of the foregoing, the Commission finds that the conditions and limitations on ACI's certification set forth below represent the minimums required by the public interest as framed in Act 496 to balance, on the one hand, the market demand for bundling and the separate subsidiary requirement of federal law, and, on the other, the objectives of Act 496 favoring a robust, competitive AW telecommunications utility.⁵

Conditions on Certification

This case arises from the 1996 Act's requirement that a Bell Operating Company (BOC), such as AW, may not enter the interLATA toll market directly. Section 272 of the 1996 Act requires the use of a separate subsidiary. All types of telecommunications providers, however, recognize that customers want "one-stop shopping" or "bundled offerings" with respect to telecommunications services. The 1996 Act itself recognizes the importance of this marketing concept, imposing a form of "equality of entry" on bundling opportunities on both the interexchange carriers, under § 271(e)(1), and the BOCs, under § 272(g).

This case returns the Commission to the issue of a "monopoly" LEC's (local exchange carrier) relationship with an affiliate offering services in a competitive telecommunications market. The Commission previously dealt with this issue as it affects Ameritech Corporation in AADS. In AADS, the Commission denied reseller authorization

⁵ "The choice of AADS for broadband switching unnecessarily puts at risk public interest objectives, especially in the areas of maximizing competition and preserving universal service, when WBI under price caps has greater pricing freedoms *to offer the same services, with no harm, and, indeed, positive gains for the public interest.* (Underscore in original; italics added.)" AADS, (slip decision, at p. 39.)

of AADS to provide data services based on broadband switching functions, a capability necessary to serve a developing market of "converging" telecommunications services. The Commission found that AW could immediately provide the same services as AADS, but without the attendant risks to the public interest posed by AADS.⁶ Both AW and AADS, at the time, were still subject to the Modified Final Judgment's ban on interLATA services.

Now, however, the 1996 Act mandates a separate subsidiary for the provision of "in-region" interLATA toll services for a period of at least three years. AW is, therefore, legally restricted at this time from providing the exact same services its affiliate ACI proposes to offer. No such restriction, however, bars AW from offering the same services that affiliate AADS had proposed. The Commission finds that, in order to promote and protect competition, especially the foreseeable competition among providers offering "bundled services," it is reasonable and in the public interest to certify ACI for operation as an ATU-Other, but with the following conditions (and the certification limitations noted above) to protect to the extent feasible those public interest objectives the legislature enacted in Act 496 and which justified the AADS holding.

Some of the comments suggest that the Commission should deny to ACI any authority to provide intraLATA toll or local exchange service so that for a bundled offering, ACI, in a joint marketing arrangement with AW to sell AW's services, would be required to sell AW's service offerings at their tariffed rates. ACI would be denied the opportunity afforded other resellers to buy from AW's wholesale tariffs. The Commission finds that in Wisconsin, where the competition would come from carriers having substantial pricing freedoms by

⁶ Id.

virtue of Act 496's creation of s. 196.499, Stats., ACI would likely be unduly hindered in its ability to flexibly bundle and price offerings to meet competition. In a sense, allowing ACI the ability to offer intraLATA toll and local exchange services as part of its bundled offerings indirectly effects the bundling ultimately anticipated by Act 496 for the LECs themselves.⁷ From the perspective of "the level playing field," competitors of ACI must look to the 1996 Act's separate subsidiary requirement as a special, albeit temporary, benefit not found at all in Act 496's framework for developing competition.

The public interest in universal service and enhanced infrastructure investment in both urban and rural areas cannot be sustained by denying ACI the opportunity to provide intraLATA toll and resold local exchange service. The Commission finds that the conditions below represent a reasonable balance between ACI's competitive necessities and the public interest objectives noted above. The conditions limit the certification of ACI to the duration of the separate subsidiary requirement and impose certain duties on ACI respecting both end-users and competitors that are necessary to protect the public interest during that period. Unlike the decision in AADS, which resulted in a denial of certification, this decision's conditions are imposed with greater certainty resulting from the enactment in the 1996 Act of long-awaited federal policies and procedures for interconnection, resale and unbundling. The 1996 Act has reduced uncertainty and it supports state jurisdiction sufficiently to mitigate the

⁷ Section 196.50(2)(g), Stats., gave all incumbent LECs statewide authority and s. 196.50(7), Stats., anticipated that the LECs, not affiliates, would be the vehicle of entry into interLATA markets.

practical considerations⁸ that contributed to the Commission's decision under state law to deny AADS' application.⁹

The Commission also finds for two other reasons that temporary certification as proposed in Condition 1 is appropriate for ACI, apart from reasons found in AADS and the federal separate subsidiary requirement. First, the comments of some of the parties indicate that many uncertainties nonetheless remain with respect to the implementation of the 1996 Act, including the pending FCC rulemaking on structural separation, checklist proceedings under § 271, arbitrations, and the continuing litigation over the FCC's interconnection order. These concerns are realistic. The temporary certification of ACI permits the Commission necessary flexibility¹⁰ to assess the adequacy of the many operational conditions proposed below, and whether, under s. 196.203(4), Stats., the public interest may require the imposition of additional or different provisions of ch. 196., Stats.

Second, Ameritech's dominant position in Wisconsin also requires a deliberate and cautious approach to whether ACI advances or delays the development of competitive telecommunications markets in Wisconsin. Where the special duties in § 251(c) for an incumbent local exchange carrier like AW are intended to open up the door to "competition" for AW's monopoly, ACI should not be a means to effectively "re-close" that door. Therefore, temporary certification of ACI helps the Commission to evaluate whether in the

⁸ AADS, supra, slip decision, at pps. 26-28.

⁹ This is not to say that if the Commission were to review the AADS record today that solely because of the 1996 Act, the Commission would necessarily reach a different conclusion.

¹⁰ Cf., Sec 1, 1985 Wis. Act 297: "[T]he public service commission [should] have flexibility to deal with the current period of transition in the industry,"

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case of Ameritech competition will successfully replace monopoly provision of telecommunications services.

The following conditions reflect four, roughly functional groupings. The first group of conditions provides the Commission's special administrative framework for accommodating this certification to the requirements of the market and state and federal law. The second group focuses upon the specific requirements for any relationship between ACI and AW and is derived in large part from those conditions imposed in several recent interim certifications of toll affiliates of LECs, especially Mid-Plains Communications Systems, Inc., docket 7869-TI-100 (August 15, 1994). The third group of conditions reflects those imposed upon other new market entrants, as in MCI Metro Access Transmission Services, Inc., docket 0015-NC-101 (February 22, 1996), TCG Milwaukee, Inc., docket 5837-NC-100 (October 27, 1995), Time Warner Communications of Milwaukee L.P., docket 5912-NC-100 (March 28, 1996), and MFS Intelenet of Wisconsin, Inc., docket 3775-NC-100 (July 17, 1996). The third group of conditions will be further defined in docket 05-TI-138, which anticipates a further final order regarding the level of regulation of competing local exchange carriers (CLECs). The last group imposes consumer and competitor duties on ACI that Act 496 anticipated AW to fulfill, but for the change in law and circumstances discussed above. Conditions may fit within more than one category.

Special Administrative Conditions.¹¹

Condition 1. The interim order herein authorizes temporary certification of ACI, and implies no right in ACI to any kind of continuing certification after the expiration date. With respect to the provision of authorized services in GTE territory, this certification is effective immediately, and, in AW territory, upon FCC approval of AW or an AW affiliate to provide in-region interLATA toll service in Wisconsin. This interim certification will automatically expire sixty (60) days after the federal mandate under 47 U.S.C. § 272(a) expires, unless extended as provided below. If, however, within 60 days following the expiration of the federal mandate, ACI petitions for extension of its certification, the certification shall continue in effect without further order until 90 days after the date of completion of all Commission administrative action on the petition. The petition should include a description of current competitive market conditions including relative market shares of ACI and AW.

The foregoing condition accommodates the 1996 Act, on the one hand, and, on the other, Act 496 and the AADS decision to the extent necessitated by the federal law requirement for a separate subsidiary, the looming market reality of "bundled" toll and local service offerings, and the objective of maximized competition consistent with other public interest objectives. Unlike other Commission orders, this condition specifically qualifies the interim nature of the certification to exclude any implication that ACI will receive a permanent or continued interim certification. This condition reserves for the Commission the opportunity at a future date to secure, if warranted, the combining of ACI's business with

¹¹ Each numbered paragraph hereafter (including sub-paragraphs) constitutes the text of a "Condition" adopted by this decision and incorporated by reference into the formal certificate.

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that of AW, as contemplated by Act 496.¹² The balance of the condition specifies a mechanism for addressing ACI's situation when the separate subsidiary requirement appears ready for termination.

Condition 2. The certification of authority for the provision of local exchange service herein (resale and purchase of unbundled network elements as described above) is conditioned upon the Commission's reserved power to impose additional sections of ch. 196, Stats., and to impose, through future rules or orders, any terms or conditions necessary to protect and promote the public interest, including, but not limited to rules or orders that the Commission may issue in dockets 1-AC-146, 1-AC-152, 1-AC-158, 05-TI-138, and 05-TI-140, and any future Commission proceedings intended to implement FCC rules and orders promulgated under the 1996 Act.

This condition protects the ability of the Commission to adjust these conditions as needed while relevant rulemakings regarding affiliate relationships (1-AC-146), quality of service (1-AC-152), and reselling (1-AC-158) are still pending. Starting from a position somewhat similar to that of CLECs, ACI should also be subject to orders issued in dockets 05-TI-138 and 05-TI-140 relating to the duties of LECs and new entrants in local exchange service markets. During this period of fundamental regulatory change and rapid changes in telecommunications technology and marketing, this condition is necessary if the Commission is to effectively promote and protect the public interest.

¹² It is the express objective of the Commission that in administering any potential future transfer of ACI business to another Ameritech affiliate that customer services not be disrupted or inconvenienced any more than absolutely necessary to effect the Commission's decision at that time. The Commission will grant reasonable, limited extensions of ACI's temporary certification that facilitate any required transfer of ACI business under Condition 1.

This condition is also required for the Commission's ability to foster the development of competition under a coherent application of state and federal requirements, and to secure information to measure and monitor the development of competitive markets sought by Act 496.

Interim General Conditions on ACI-AW Relationship.

Condition 3. ACI shall not obtain services from AW at rates, terms, or conditions that are not generally available to similarly-situated nonaffiliate customers of AW.

Condition 4. ACI shall not seek or accept preferential treatment from AW with respect to the ordering, availability, installation, maintenance, testing, or operational support systems, for, or in respect to, any telecommunications service.

Condition 5. Except in compliance with applicable FCC rules and orders, including rules or orders relating to permitted joint marketing activities, ACI shall not, for itself or any marketing agent or affiliate, seek or accept from AW, directly or indirectly, any customer proprietary network information¹³ in AW's possession or control, unless the information is generally available on equal terms to any person who requests such information or a customer has specifically authorized AW to transfer its information to ACI.

Condition 6. ACI shall not seek, accept, or use any AW inside or unpublished facilities or network information respecting any procedure, feature or capability in or associated with the telecommunications services of AW, obtained from any affiliate company,

¹³ "Customer proprietary network information" has the meaning given in 47 U.S.C. § 222.

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unless such inside or unpublished facilities or network information is made reasonably available to other telecommunications providers on a nondiscriminatory basis.

Condition 7. ACI shall not seek or accept any direct or indirect subsidization from AW, except that dividend payments paid directly or indirectly to the common parent corporation do not constitute indirect subsidization.

Condition 8. ACI shall not seek, accept, or use, except upon appropriate monetary compensation (including royalties or license fees) and subject to Commission jurisdiction under s. 196.52(5)(b), Stats., any proprietary technology owned or paid for by AW, book assets intended to be used to provide nonregulated or competitive services, or any "nonbook," intangible assets of AW, such as, but not limited to, good will, patents, copyrights, the corporate brand names of "Wisconsin Bell, Inc.," or derivations thereof, and service and trade marks.

Condition 9. ACI shall not encourage, advise, or communicate to AW, in any manner, any information that is intended to influence AW to research, develop, design, or implement its services (including network facilities) to prefer or unjustly discriminate in favor of ACI.

Condition 10. ACI shall not in any manner accept or request from AW the transfer to ACI of any of AW's current customers, except pursuant to express, affirmative consent of the customer.

This second group of conditions governs the conduct of ACI in relation to AW in a manner consistent with prior decisions, as noted above, where the affiliate would otherwise have the opportunity to exploit its relationship to a LEC in a monopoly market. Such restrictions are in the public interest in the promotion and protection of competition in

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relevant markets for interLATA and intraLATA toll and local exchange service. The Commission notes with respect to Condition 9 above that the reciprocal obligation of AW is to avoid preferential treatment of ACI; that is, AW should conduct itself as if it were a stand-alone entity and with due regard to the interests of all present and potential consumers, affiliated (including ACI) or otherwise. With respect to Condition 10 above, the Commission notes that a negative enrollment of telecommunications services does not constitute express, affirmative consent. A notification that, if the customer does nothing, that the account will be transferred to ACI, would likely constitute a violation of s. 100.207(3), Stats., absent extenuating circumstances. Prior Commission approval for such a transfer is suggested. None of the foregoing conditions is intended to prohibit ACI from engaging in bona fide joint marketing activities with AW in accordance with 47 U.S.C. § 272(g) and regulations and orders of the FCC.

Interim Conditions on ACI with Respect to Local Exchange Service Markets.

The conditions in this third category are imposed on any competitive local exchange carrier (CLEC) in the local exchange service markets, for example, ACI's potential operations in GTE territory. These conditions have been imposed upon the certifications of Time Warner, MCI Metro, and MFS, to name a few, to install a uniform regulatory scheme that monitors the entry of new competitors, seeks data to measure competition, secures data for universal service and infrastructure objectives, and imposes a limited set of enforcement statutes to use in the event of violations or activities detrimental to the overall public interest in intrastate telecommunications services.

Condition 11. ACI shall comply with the following provisions of ch. 196, Stats.: ss. 196.01; 196.02(1), (4), and (5); 196.03(6); 196.07; 196.14; 196.20; 196.203; 196.209; 196.218; 196.25; 196.26; 196.28; 196.39; 196.395; 196.40; 196.41; 196.43; 196.44; 196.65; 196.66; 196.81; 196.85; and 196.858. Certain of the foregoing statutes apply only to the extent of the modifications described below:

(a). Under s. 196.07, Stats., ACI shall close its annual account on December 31 and ACI shall file an abbreviated annual report in a form to be supplied by the Commission. The report will, at a minimum, require ACI to file a Wisconsin-specific operating income statement.

(b). Under s. 196.20, Stats., ACI shall:

i). Keep on file with the Commission any tariff or agreement that it has entered into for interconnection arrangements for local exchange services. The tariff shall contain all the rules, range of rates including the maximum rate for interconnection, and classifications used by it in the provision of its interconnection service. The tariff shall be effective when filed or on a date indicated by ACI, unless suspended by the Commission. The tariff shall also contain a map defining ACI's service territory, as established or modified from time to time.

ii). ACI shall provide advance notice to affected customers of all price increases for, and material changes in, its local exchange service. Notice shall be in writing or by publication to all affected customers prior to billing for a changed service or billing a service at a higher price.

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(c). Section 196.81, Stats., shall only apply to the extent that ACI shall provide written notice to the Commission not less than 60 days before its abandonment of basic local exchange service within its service territory.

Condition 12. ACI shall file by April 1 of each year a competitive market report that will be developed by the Commission staff. The report may include, but is not limited to, the following information: a) a map of all leased or owned facilities in Wisconsin; b) a description of facilities and switches used to provide intrastate Wisconsin telecommunications services, including as necessary, facilities located in other jurisdictions; c) the number of customers and total revenues received from the provision of local exchange service broken out by ACI territory, type of service, and type of customer (e.g., business or residential customer); d) an average of rates charged for local exchange services broken out by business and residential customers; and e) a description of services and a comparison to equivalent competitor service(s).

Protective Conditions--ACI "Replacing" AW.

Condition 13. ACI shall comply with the following additional provisions of ch. 196, Stats.: ss. 196.015, 196.04, 196.204, 196.219, and 196.52:

(a). For purposes of s. 196.219(3), Stats., ACI shall comply with ch. PSC 165, Wis. Adm. Code., and any amendments or successors thereto, to the extent the Commission imposes the obligations contained therein in the Commission's docket on local competition, docket 05-TI-138.

(b). For purposes of ss. 196.04 and 196.219(3)(a), Stats., ACI shall, when requested, interconnect with AW and GTE, with rates and charges for such interconnection

to be established voluntarily, or by arbitration, as described in 47 U.S.C. § 252 and implemented by the Commission in 05-TI-140. Tariff transactions and other agreements between ACI and AW also constitute affiliated interest contracts or arrangements subject to s. 196.52, Stats.

(c). For purposes of s. 196.52, Stats., ACI shall be considered a utility required to give the Commission notice of contracts or arrangements with any other Ameritech affiliate, but shall only be obliged to notice contracts or arrangements with AW and with any other affiliate that contemporaneously provides the same services or sells or leases the same tangible or intangible property or goods to both ACI and AW.

The Commission finds that imposition of the foregoing statutes and conditions is in the public interest in the development of fully competitive markets and the protection of universal service and consumer choice during this transition period. Together, ss. 196.015 and 196.204, Stats., prohibit ACI from subsidizing AW to the detriment of local exchange competition. In light of the temporary need for a separate subsidiary under federal law, the purpose of ss. 196.04, and 196.219, Stats., is to assure that the development of a fully-competitive telecommunications market is not frustrated by the diversion of new, desirable technologies into the ACI affiliate. In an affiliate, such technologies could be shielded from compulsory interconnection with competitors, who would otherwise be relegated to the increasingly inadequate services of AW for access and resold services. The imposition of the affiliated interest statute, s. 196.52, Stats., requires ACI to treat itself as a utility obliged to give notice to the Commission of any affiliated interest contract arrangement with AW, and, as found here, with any other affiliate that does business simultaneously with both ACI and AW. This further qualification is intended to prevent indirect discriminations being effected

through common service affiliates. The three subparagraphs of Condition 13 impose rules and case orders to more precisely specify the obligations of AW that ACI should parallel in order to protect and promote the public interest.

Condition 13 does not represent a tilting of the level playing field, but is intended to assure competitive neutrality to protect consumers, universal service and service quality, as sought by Act 496. Such a condition is protected by 47 U.S.C. § 253(b).¹⁴ Without the imposition of these particular statutes, ACI's competition with AW could be a means to impede, rather than advance, the development of competitive telecommunications markets consistent with the public interest as framed by both Act 496 and the 1996 Act.

ULTIMATE FINDINGS OF FACT

THE COMMISSION FINDS:

1. ACI is a Delaware corporation, duly authorized to do business in the state of Wisconsin.
2. ACI is willing and able to provide intrastate telecommunications service in Wisconsin, as defined in the Findings of Fact.
3. ACI intends to provide services that are available from other telecommunications providers, and desires to bundle them to accommodate likely market demand for bundling of such "bundled" services.

¹⁴ 47 U.S.C. § 253(b) provides:

"Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

4. Certification for ACI under s. 196.01(ld)(f), Stats., does not mandate a hearing, and the Commission finds that none is necessary.

5. Certification of ACI to provide the described interLATA, intraLATA, and local exchange services, with the identified facilities and resale restrictions, is in the public interest as it promotes competition and consumer choice.

6. Certification as an "other" ATU under s. 196.01(1d)(f), Stats., is reasonable, necessary, and convenient to the public interest under the factors of s. 196.03(6), Stats., as it is the category most appropriate to the services ACI proposes, while permitting flexible imposition of interim conditions during a period of transition.

7. It is reasonable, necessary, and convenient to the public interest to certify ACI to provide basic local exchange service only on a resale basis in AW territory, to provide for temporary certification, and to subject such certification to pending rules and orders, all as set forth in Conditions 1 and 2 above, in order to sufficiently protect Act 496's intention that, notwithstanding the temporary federal requirement that in-region, interLATA toll be provided through a separate subsidiary, AW may ultimately be a competitive telecommunications utility capable of providing bundled services just as proposed by ACI.

8. It is also reasonable and in the public interest to provide for temporary certification of ACI to assure sufficient flexibility to protect and promote the public interest in competition while regulatory and judicial uncertainties exist. Temporary certification would also check the ability of a dominant Ameritech, through ACI, to unreasonably and improperly impede the public interest in the development of robust competition from new entrants that achieve initial entry under the 1996 Act.